



February 16, 2011

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

Re: *Implementation of Section 224 of the Act, WC Docket No. 07-245; A National Broadband Plan for Our Future, GN Docket No. 09-51*

Dear Ms. Dortch:

This is to inform you that on February 15, 2011, Glenn Reynolds and the undersigned of USTelecom, met with Christi Shewman, Albert Lewis, Marvin Sacks, Marcus Maher, and Richard Kwiatkowski of the Wireline Competition Bureau (Bureau) in connection with the proceedings identified above. During the meeting, USTelecom discussed pole attachment rate and access issues with the Bureau staff.

During the meeting, USTelecom emphasized that the Federal Communications Commission (Commission) has a statutory obligation under Section 224(b) to ensure just and reasonable pole attachment rates, terms and conditions for all attachers, including Incumbent Local Exchange Carriers (ILECs). Section 224(b) regulates the rates, terms, and conditions for “pole attachments,” which are defined as any attachment by a cable television system, or “provider of telecommunications service.” As providers of telecommunications services, ILECs fall under the Commission’s broad authority contained in Section 224(b).

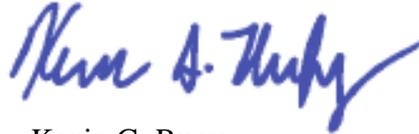
USTelecom also dismissed erroneous assertions from the utility industry that the statute’s references to “telecommunications carrier” and “provider of telecommunications services” are interchangeable. Contrary to the views expressed by the electric utility industry, Congress uses the phrases “telecommunications carrier” and “providers of telecommunications” throughout the statute in ways that demonstrate they are distinct terms of art and are not interchangeable.

In addition, USTelecom demonstrated that electric utility industry claims that the rights contained in Section 224(b) and Section 224(f) are inseverable, are at odds with existing Commission precedent and statutory interpretation. USTelecom pointed out that both sections establish separate rights, with Section 224(b) ensuring rates, terms and conditions that are “just and reasonable”, and Section 224(f) requiring “nondiscriminatory access.” As the Commission recently affirmed, Section 224(f) is simply about ensuring that pole owners may not prohibit

third party attachers from using physical means of access that the pole owner itself uses, and does not constrain the stand-alone obligations created by Section 224(b).¹

Please let me know if you have any questions.

Sincerely,



Kevin G. Rupy

cc: Christi Shewman
Albert Lewis
Marvin Sacks
Marcus Maher
Richard Kwiatkowski

¹ Order and Further Notice of Proposed Rulemaking, *Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, 25 FCC Rcd. 11,864, ¶ 8 (2010).